

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**BOBBI L KELLOGG**

Claimant

**APPEAL NO. 09A-UI-04414-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURGER KING CORPORATION**

Employer

**OC: 02/01/09**

**Claimant: Appellant (1-R)**

871 IAC 24.27 – Part-Time Quit  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated February 24, 2009, reference 01, that concluded she voluntarily left part-time employment with Burger King Corporation without good cause but was eligible to receive benefits based her wages from her other employers. A telephone hearing was held on April 15, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Carrie Taylor participated in the hearing on behalf of the employer.

**ISSUE:**

Was the appeal in this case filed timely?

**FINDINGS OF FACT:**

The claimant started working at the Burger King restaurant in Council Bluffs, Iowa, in April 2007, while it was owned by Simmonds Restaurant Management (Account Number 125089). The business was sold to Burger King Corporation (Account Number 364444) effective July 17, 2008. The claimant continued working at the restaurant under the ownership of Burger King Corporation until she quit employment on November 4, 2008.

An unemployment insurance decision was mailed to the claimant's last-known address of record on February 24, 2009. The decision stated she voluntarily left part-time employment with Burger King Corporation on November 4, 2008, without good cause but was eligible to receive benefits based her wages from her other employers and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by March 6, 2009.

The claimant received the decision within the ten-day period for appealing the decision. She filed a written appeal on March 20, 2009, which is after the time for appealing had expired. The claimant delayed in filing her appeal because on her monetary determination, it listed Simmonds Restaurant Management as her last employer and she did not understand why. She appealed the decision because she believed she had good cause to quit due to a reduction in hours.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal.

Under the unemployment insurance law, a decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known mailing address. Iowa Code § 96.6-2.

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed her appeal late because the monetary determination mistakenly listed Simmonds Restaurant Management as her most recent employer, which confused her. The reason why the claimant disagreed with the decision dated February 24, 2009, was she believed she had good cause to quit due to the reduction in hours. I cannot see why having Simmonds listed as her most reason employer kept her from filing an appeal of the decision regarding her quitting Burger King Corporation's employment. Since the appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

Agency records show that Account # 125089 for Simmonds Restaurant Management was transferred to Account Number 364444 for Burger King Corporation (Account Number 364444) by successorship. The Agency treated the two employers as separate employers in making its decision and has charged Account Number 125089 for benefits paid to the claimant. The issue of whether the successorship affects the decision dated February 24, 2009, reference 01, is remanded to the Agency to investigate and make a determination since this was not an issue included on the notice of hearing.

## DECISION:

The unemployment insurance decision dated February 24, 2009, reference 01, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision that concluded she voluntarily left part-time employment with Burger King Corporation without good cause but was eligible to receive benefits based her wages from her other employers remains in effect.

The issue of whether the successorship affects the decision dated February 24, 2009, reference 01, is remanded to the Agency to investigate and make a determination

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css